

## Attachment I

**FORM OF CONTRACT FOR  
GROUNDS MAINTENANCE SERVICES  
DCAM-15-NC-0085**

**THIS CONTRACT FOR GROUNDS MAINTENANCE SERVICES** ("Agreement") is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** ("Department") and **[INSERT CONTRACTOR NAME]** ("Contractor").

**WITNESSETH:**

**WHEREAS**, the Department is charged with grounds maintenance at various District government facilities under its jurisdiction.

**WHEREAS**, the Department issued a Request for Proposals to engage one or more contractors to provide grounds maintenance services for District of Columbia public facilities.

**WHEREAS**, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services.

**WHEREAS**, the Department desires that the services be provided from Date of Award through one year thereafter with the option to extend for four one year periods.

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

**Agreement:**

**Section 1      Scope of Work.**

**Section 1.1** The Contractor shall provide all management, tools, supplies, equipment, vehicles, and labor necessary to perform the required routine,scheduled grounds maintenance services throughout the Contract term. The months of service are normally January through December. The intent of the services to be provided is to present a clean, neat, and professional appearance and to promote the growth of healthy grass, trees, shrubs, and plants at various District locations.

**1.2 General Requirements**

**1.2.1 Routine, Scheduled Grounds Maintenance.** The Contractor shall provide routine grounds maintenance services which include the following services per maintenance session: mowing; trimming/edging; debris removal; and raking, bagging, and removal of leaves at regular intervals throughout the term of the Contract, as specified herein.

**1.2.2 Mowing Services.** The Contractor shall provide all personnel, equipment, tools, supervision, and other items and services necessary to ensure that all mowing is performed in a manner that will maintain healthy grass at the contract's required turf or grass height and present a clean, neat, and professional appearance.

**1.2.3** The Contractor shall perform mowing as necessary to maintain the proper grass height of three (3) inches. Some areas will be labeled as natural or restoration areas and can have skip mow patterns to allow for wildlife habitat but these must be identified by the Department prior to the mowing season. The Contractor shall submit a routine grounds maintenance schedule to the Department no later than thirty (30) days prior to each grass growing season (March – December). Unless otherwise rescheduled due to inclement weather, all scheduled mowing shall commence and be completed in one day, or as specified. The Contractor shall cut the grass to the street curb not just sidewalks; to include the tree spaces surrounding the property. The Contractor shall mow around all physical features (i.e. poles, walls, fire hydrants, signs, etc.).

**1.2.4** The Contractor shall mow the turf in such a way that clippings are not piled up or rows of clippings are formed. The Contractor shall change the mowing pattern or direction at each cut to reduce the grooves in the turf caused by equipment.

**1.2.5** The Contractor shall prevent scalping, uneven mowing, rutting by equipment, and damage to trees, shrubs, and plants during Contractor operations. The Contractor shall use precautions such as removal or repair of equipment causing unnecessary damage or procedures causing unsatisfactory mowing. The Contractor shall protect all trees from damage by mowers, weed eaters, and other equipment, and protect buildings and property. The Contractor shall replace any damaged trees and landscape areas, to the satisfaction of the Department, as a result of the Contractor's action or inaction.

**1.2.6** The Contractor shall repair turf damaged during mowing operations to its previous condition within 72 hours of being notified of the damage by the Department.

**1.2.7** If the Contractor's equipment shreds litter such as trash or debris, the Contractor shall remove the litter the same day work in the area is completed.

**1.2.8** The Contractor shall remove grass clippings from all surfaces immediately after mowing or double cut to prevent smothering of the grass.

**1.2.9** The Contractor shall perform mowing and trimming so as not to project grass clippings on paved surfaces, retaining walls, curbs, fence lines, parked vehicles and all areas abutting the grass. The Contractor shall direct grass clippings towards the property and away from the sidewalk or road abutting the property. In the event that clippings end up on sidewalks, streets, or areas outside of the District's property being worked on, the Contractor shall immediately clear such areas of clippings.

**1.3 Trimming/Edging.** The Contractor shall perform trimming/edging during each mowing maintenance session for the edging of all accessible sidewalks, curbs, mulched areas, tree wells, fencing, and flower beds. The Contractor shall define the edge to create a clean cut

vertically. The Contractor shall perform trimming around all physical features on an as needed basis to match the height and appearance of surrounding grass. Physical features include, but are limited to, fence lines, poles, walls, fire hydrants, and signs. The Contractor shall be held responsible for repairing any damage to trees, shrubs, and plants from trimming. If using a string trimmer, the Contractor shall ensure that the string of the trimmer does not come in contact with the trunk of any tree. The Contractor shall clear and clean paved surfaces including, but not limited to, sidewalks, parking lots and streets, and drainage structures of grass clippings and other debris following each mowing by blowing the surface areas.

**1.4 Removal of Debris.** The Contractor shall conduct a pre-mowing site walkthrough to remove all debris that will interfere with the mowing maintenance session such as trash, limbs, or other items in the turf areas. The Contractor shall remove all trash and debris prior to mowing. The Contractor shall remove all other materials such as grass clippings, weeds, tree trimmings (branches up to 20" in diameter), fallen branches, and leaves from all turf service areas at the end of each mowing operation. In addition, the Contractor shall remove any grass clippings or other debris from all paved areas within the property boundary. The Contractor shall not blow any grass clippings down the city's catch basins, nor in the city roadways.

**1.4.1** The Contractor shall remove trash, debris, and all other materials in a legal and environmentally-responsible manner. The Contractor shall not use trash receptacles and dumpsters located on-site for the disposition of trash organic matter and debris. The Contractor shall dispose of all debris at an off-site location in accordance with existing local, state, and federal regulations. The District may direct the Contractor to dump the grass clippings at a site for composting at any time during the term of this contract.

**1.4.2** The Contractor is not responsible for emptying District trash receptacles and dumpsters.

**1.5 Removal of Leaves.** The Contractor shall bag and remove leaves from grounds, as needed, normally during the months of January through December. However, the typical months for leaf removal may vary. The Contractor shall submit to the Department a schedule to provide leaf removal service that will ensure that service is routinely provided until all leaves have fallen from trees surrounding each location being serviced. The District may direct the Contractor to dump the leaves at a site for composting at any time during the term of this contract.

**1.6 Contractor's Operations and General Requirements.** At all times while this Agreement is in effect, the Contractor shall comply with the follow requirements:

- a. Public Safety.** The Contractor shall provide all services in accordance with quality standards of the grounds maintenance industry. The Contractor shall erect, at the Contractor's expense, proper barricades, signs, and warning devices as required for pedestrian and traffic safety when necessary. The Contractor shall employ traffic control procedures, and shall comply with all applicable District Department of Transportation regulations while on any site or occupying public space. Erection of barricades that restrict or redirect pedestrian traffic shall be coordinated in advance with the Department or the District's building manager(s) for the location.

- b. The Contractor shall confine to the greatest possible extent, all operations, equipment, apparatus, and placement of materials to the immediate area of work. The Contractor shall comply with all District of Columbia rules and regulations in effect at the work site, including, but not limited to parking, traffic control plans and OSHA standards for landscape and horticultural services, use of walks, security restrictions, hours of allowable entrance and departure.
- c. The Contractor shall store its equipment off-site, not on District property.
- d. When observed or encountered, the Contractor shall notify DGS verbally and in writing of any defects noted in surfaces that are to receive service or any obstacles, if such defects or obstacles may affect lawn care operations or present a safety concern. Defects may include anything that impedes the Contractor's ability to mow the turf or provide other grounds keeping or grounds maintenance services, including but not limited to, water build up, building materials, dumpsters or trash receptacles, vehicles, temporary structures, or debris that is not considered litter (litter is defined as bottles, cans, paper, tires, glass, clothes, tree limbs under 4" in diameter or other materials that could be removed by the crews without the use of equipment). Depending on the nature of the defect or obstacles, the Department, once notified, will determine if and how the Contractor should precede with lawn care operations. The Contractor shall notify the designated agency point of contact of any items that need to be moved in order for work to be completed.

## **1.7 Service Hours and Scheduling**

**1.7.1 Service Hours.** The Contractor shall perform all grounds maintenance services during the hours of 7:00am – 7:00pm local time (adjustments will be made for Daylight Savings Time), Monday through Friday, excluding District holidays, unless otherwise approved by the Department. If the Contractor needs to work on a weekend or District holiday in order to maintain the required grass height, the Contractor shall obtain the Department's approval. There may be situations that require the Contractor to work other than the hours specific herein. In those cases, the Contractor shall advise the Department to reschedule the work to minimize disruption.

**1.7.2 Scheduling.** The Contractor shall submit updates to the routine grounds maintenance schedule, at least by the 1<sup>st</sup> day of each month and as necessary if changes occur or as necessary to maintain the required grass height. The Department will approve the revised schedule prior to commencement of work. The schedule and number of mowing required per location, per month may change depending on funding availability, weather, and need. If after the Contractor's schedule is approved, the District requires a change in the mowing frequency at any of the locations, the Department will inform the Contractor and request, from the Contractor, a revised Mowing Schedule. Tentative monthly mowing frequencies are:

January	1 routine grounds maintenance session (Leaf removal)
February	0 routine grounds maintenance session
March	2 routine grounds maintenance sessions
April	4 routine grounds maintenance sessions
May	4 routine grounds maintenance sessions
June	4 routine grounds maintenance sessions
July	3 routine grounds maintenance sessions
August	2 routine grounds maintenance sessions
September	3 routine grounds maintenance sessions
October	2 routine grounds maintenance sessions
November	1 routine grounds maintenance session (Leaf removal)
December	1 routine grounds maintenance session (Leaf removal)

**1.7.3 Inclement Weather.** The Contractor may cancel all or part of a schedule mowing due to inclement weather. The Contractor shall notify the Department, preferably on or before 8:00am of the day to be canceled, when such cancellation is desired, or as soon as inclement weather is known and the Contractor shall also notify the Department of the date for which service is rescheduled. Inclement weather shall be defined as weather that both the Contractor and the Department agree makes the accomplishment of quality work unfeasible, unusually time-consuming, or potentially dangerous or harmful. In the event mutual agreement cannot be reached for a particular mowing, the inclement weather determination shall be made by the Contractor. Any part of a scheduled mowing that is canceled due to inclement weather shall be rescheduled by the Contractor to a date within three calendar days (excluding weekends and District holidays) of the cancellation. The District, at its option, may elect not to reschedule any part of a mowing. If the District elects not to reschedule, the District will not be obligated to pay the Contractor for that portion of the cut that did not take place.

**1.7.4 Emergency & Unplanned Services.** The Department may require unscheduled/emergency service. When required, the Department will notify the Contractor as far in advance as possible. The Contractor shall be prepared to respond to requests for unscheduled/emergency service within as little as two hours. The Contractor shall designate a point of contact on its staff, to receive such notification, who can readily respond. The Department may change locations or schedules of cuts, if needed, without any additional charge to the Department.

**1.7.5 Reporting.** At all times while this Agreement is in effect, the Contractor shall comply with the following requirements:

- a. The Contractor shall submit daily, weekly, and monthly Work Completion Reports to the Department, on a mutually agreed upon routine grounds maintenance schedule. All reports are required to be submitted via email, in PDF format.
- b. The Contractor shall immediately notify the Department, in writing, of any accidents on the job site arising from the performance of this Agreement that involve bodily injury to Contractor's employees or District workers or both, building occupants, visitors, or other persons.

## **Section 2      Key Personnel.**

**2.1** The Contractor's key personnel shall include, at a minimum, the following individuals: (i) the account executive for this contract; (ii) the individual who will be responsible for dispatching crews and equipment; and (iii) the key foreman who will oversee and supervise the work in the field. The account executive should be a senior member of the Offeror's management team who has the authority and responsibility for ensuring that the Contractor's responsibilities are properly discharged. The Contractor will not be permitted to reassign any approved key personnel unless the Department approves the proposed reassignment and the proposed replacement.

**2.2** The Contractor shall designate two key personnel to be available to communicate with the Department by telephone and email twenty-four (24) hours a day, seven (7) days a week over the course of the contract.

**2.3** The on- site supervisor(s) or alternate(s) shall have full authority to act for the Contractor on all contract matters relating to daily operation of this contract.

**2.4** The Contract Manager, on-site supervisor(s), and any alternates shall have excellent oral and written communication skills, and be able to read, write, speak and understand the English language.

**2.5** The Contractor shall not employ any person for work on this contract if such employee is identified to the Contractor by the Department as a potential threat to the health, safety, security, general well-being or operational mission of the District agency, its employees, and visitors.

Where reading, understanding, and discussing safety and environmental warnings are an integral part of a contract employee's duties, that employee shall be able to communicate effectively with the Contract supervisor(s).

**2.6** The Contractor's employees shall present a neat appearance and be easily recognized as the Contractor's employees. The Contractor shall provide each employee with a uniform (e.g. hat, shirt with logo, or matching tops and bottoms) as well as an identification badge that shall include the employee's name and Contractor's name. The identification badges shall be worn or attached to the outer garment at all times.

**2.7** The Contractor shall ensure employees have a current and valid driver's license before the employee operates a contractor-owned vehicle.

**2.8** The Contractor shall provide employees that are fully capable, experienced, and trained in the work they are employed to perform. The Contractor shall ensure employees are qualified to safely operate grounds maintenance equipment before assigning employees to tasks that require use of the equipment. The Contractor shall maintain records of each individual's training, including a certificate of training completion.

2.9 Prior to assigning an employee to work on this contract, the Contractor shall provide, at minimum, environmental, health and safety training to the extent required by federal, state and local laws and instructions related to the provision of grounds keeping and landscaping services. The Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to all employees or other persons affected and all job related materials and equipment.

2.10 In performance of the contract, it shall be the responsibility of the Contractor to assure the availability of employees at all times to complete work under the contract.

2.11 Services are performed at a location where children may be present and may come in direct contact with the Contractor's employees; the District may require the Contractor to conduct background checks of its employees who will be assigned to work at such locations.

### **Section 3     Equipment**

3.1 The Contractor shall provide and maintain contractor-owned or leased vehicles to meet the requirements of this contract. Any Contractor vehicles used in the performance of this contract shall have the company name prominently displayed on both sides of the vehicle.

3.2 All vehicles used in the performance of this contract shall be in operable condition and meet the local, state and federal safety requirements. The Department may inspect the Contractor's vehicles at any time and direct the removal of any unsafe or non-functional vehicles. All vehicles shall be registered, licensed, insured, and operated by a licensed driver. All vehicles shall be registered; have Department of Transportation (DOT) numbers visible as required by law; and follow all District regulations related to parking, driving, and licensing.

3.3 The Contractor's equipment, including but not limited to mowers (push, riding and tractor), and trimmers shall be of a quality, size and type suitable for accomplishing the required work. The Contractor's equipment shall be in good repair and able to operate efficiently and safely. Mower blades shall be sharp, to prevent the tearing of the grass blades.

3.4 The Contractor's equipment shall have the proper safety devices maintained at all times while in use. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Department shall direct the Contractor to remove such equipment and/or operator until the deficiency is corrected to the satisfaction of the District.

3.5 The Department may inspect the Contractor's equipment and tools at any time.

### **Section 4     Work Plan and Quality Assurance**

The Contractor shall establish, develop, maintain, and implement a Work Plan, including a complete Quality Control Plan (QCP) delineating the Contractor's Quality Control Program and



Inspection System to monitor and control its performance of services to ensure compliance to the contract requirements. The QCP shall include timely and effective corrective action for all deficiencies identified by the Contractor or the Department; shall implement procedures to identify, prevent, and ensure non-recurrence of defective services; shall address inspection procedures; shall provide an action plan for correction of discrepancies; shall provide a strategy for retaining qualified personnel; and shall explain management's role in its commitment to quality performance. After initial approval, if the plan is updated or changed, the Contractor shall re-submit the QCP to the Department for approval.

#### **Section 5 Licensing, Accreditation and Registration.**

The Contractor and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

#### **Section 6 Conformance with Laws.**

It shall be the responsibility of the Contractor to perform under the contract in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

#### **Section 7 Service Contract Act.**

The Service Contract Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by that Act. Applicable wage determinations are attached hereto as Attachment.

#### **Section 8 Time is of the Essence.**

Time is of the essence with respect to the contract. The Department shall have priority over any other similar contract held by the Contractor throughout the course of the contract. As such, the Contractor must dedicate such personnel and other resources as are necessary to ensure that the required services are completed on-time and in a diligent, skilled, and professional manner.

#### **Section 9 Contractor's Fees.**

**Section 9.1 Type of Contract.** This is an indefinite delivery indefinite quantity contract with fixed unit price per maintenance session. The Contractor shall be compensated at the fixed unit rates established in Attachment. These fixed unit rates will be the Contractor's sole compensation for work performed by the Contractor and as such should include adequate amounts to cover the Contractor's labor, vehicles, tools, supplies, field equipment, overhead, insurance and profit, regardless of whether such services are provided by the Contractor's own forces or a subcontractor.

**Section 9.2 Mandatory Subcontract Provisions.** The Contractor shall ensure that all subcontracts in excess of \$25,000.00 and required by law, as described in Section 13, contain the following provisions;

**Section 9.2.1** that, to the extent of the Work or supply within the agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

**Section 9.2.2** that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

**Section 9.2.3** that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

**Section 9.2.4** that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

**Section 9.2.5** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

**Section 9.2.6** that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

**Section 9.2.7** that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

**Section 9.2.8** that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

**Section 9.2.9** that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

**Section 9.2.10** that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

**Section 9.3 Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**Section 9.4 Not-to-Exceed Amount.** This contract has a not-to-exceed amount of [INSERT AMOUNT] Dollars (\$[INSERT AMOUNT]) (the "NTE Amount"), and in no event shall the Contractor be entitled to recover more than the NTE Amount unless the Department has authorized the Contractor to exceed the NTE Amount in advance through a duly executed change order. The Contractor shall advise the Department in writing when it has reached eighty percent (80%) of the NTE Amount.

**Section 10 Term.**

**Section 10.1 Term.** This Agreement shall begin on Date of Award through (1) one year thereafter. The Contractor shall be required to perform the required grounds maintenance services for all the facilities listed on Exhibit during the term of this Agreement.

**Section 10.2 Option Years.** The Department shall have the unilateral right to extend the term of this Agreement for (4) four, (1) one year option periods, or successive fractions thereof by written notice to the Contractor before the expiration of the contract.

**Section 10.2.1 Option Years Pricing.** In the event the Department exercises its option to extend the Agreement to cover an option year, the indefinite delivery indefinite quantity fixed price per maintenance session is applicable to such Option Year are set forth in Attachment.

**Section 11 Changes.**

**Section 11.1 Changes Authorized.** The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**Section 11.2 Executed Change Directive/Order Required.** Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

**Section 11.3 Prompt Notice.** In the event the Contractor encounters a situation which the Contractor believes to be a change to this contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

**Section 11.4 Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

**Section 11.5 Failure to Agree.** If the Contractor claims entitlement to a change in the contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the contract, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 14 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

## **Section 12 Payments.**

**Section 12.1 Invoicing.** The Contractor shall bill the Department on a monthly basis. Each such invoice shall cover all of the work performed during the preceding month and shall be broken down by storm. For each such storm, the invoice shall include: (i) date and time of operations; (ii) quantity of snow and/or ice removed; (iii) equipment and materials used; and (iv) staff utilized.

**Section 12.2 Supporting Documentation.** The Contractor shall submit with each invoice cost backup supporting such invoice.

**Section 12.3 Right to Withhold Payments.** The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if

- .1 the work is defective and such defects have not been remedied; or
- .2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within five calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or

- .4 the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the these Special Provisions).

### **Section 13 Economic Inclusion Requirements**

**Section 13.1 SBE Utilization.** The Contractor shall comply with the following

#### **Section 13.1.1 Mandatory Subcontracting Requirements.**

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 50% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (b) If there are insufficient SBEs to completely fulfill the requirement of paragraph 12.1 (a), then the subcontracting may be satisfied by subcontracting 50% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections Section 12.1.1 and Section 12.1.2 of this clause.
- (d) Except as provided in Section 12.1 (e) and 12.1 (g), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 50% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (e) A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43 or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 50% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

**Section 13.1.2 Subcontracting Plan.** If the prime contractor is required by law to subcontract, it shall subcontract at least 50% of the dollar volume of Task Orders in accordance with the provisions of Section 12.1. The subcontracting Plan shall be submitted as part of the Contractor's Task Order proposal and may only be amended with the prior written approval of

the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor; and
- (d) The price that the prime contractor will pay each subcontractor.

**Section 13.1.2.1 Copies of Subcontracts.** If the Contractor has a subcontracting plan required by law for this contract or Task Orders issued pursuant to this agreement, the Contractor shall submit fully executed copies of all subcontracts identified in the subcontracting plan to the CO, PM, District of Columbia Auditor and the Director of DSLBD within twenty-one (21) days of the execution of a Task Order.

**Section 13.1.2.2 Subcontracting Plan Compliance Reporting.** If the Contractor has a subcontracting plan required by law for this contract or Task Orders issued pursuant to this agreement, the Contractor shall submit a quarterly report to the CO, PM, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (a) The price that the prime contractor will pay each subcontractor under the subcontract;
- (b) A description of the goods procured or the services subcontracted for;
- (c) The amount paid by the prime contractor under the subcontract; and
- (d) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

**Section 13.1.3 Annual Meetings.** Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, PM, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

**Section 13.1.4 Notices.** The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

**Section 13.1.5 Enforcement and Penalties for Breach of Subcontracting Plan.**

- (a) Contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- (b) A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including

monetary fines in accordance with D.C. Official Code § 2-218.63.

- (c) If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in Section 14.16 of the agreement.

**Section 14    Subcontracts.** The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

#### **Section 14.2    First Source Agreement**

**Section 14.2.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**Section 14.2.2** The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

**Section 14.2.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 14.2.4** The Contractor shall be responsible for: (i) including the provisions of this Section 11.2 in all subcontracts; (ii) collecting the information required in this Section 11.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 11.2.

#### **Section 15    Termination for Convenience.**

The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

#### **Section 16    Termination for Default.**

The Department may terminate this Contract for default if the Contractor fails materially to perform any of its duties or obligations under this Contract and such failure continues for a

period of at least seven (7) days after receiving written notice of such failure from the Department.

## **Section 17 Claims and Dispute Resolution.**

**17.1 Notice of Claim.** If the Contractor submits a written request to change the terms of the agreement and the Department denies the change(s) requested in a written Change Proposal, or fails to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item; or, if the Contractor wishes to assert a claim over a contract dispute not arising from matters related to a Change Proposal, Change Order or Change Directive, then a written notice of claim must be submitted to the Department pursuant to the procedures in section 4732 of the Department of General Services ("DGS" or "Department") procurement rules (27 DCMR 4732) and section 1004 of the District's *Procurement Practices Reform Act of 2010* (PPRA) (D.C. Official Code section 2-361.06(a)(2))(2011 Repl.).

**17.2 Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

**17.3 Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process, may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

## **Section 18 Insurance.**

**Section 18.1 Required Insurance.** The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Two Million Dollars (\$2,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Two Million Dollars (\$2,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be



provided under the Agreement) and completed operations coverage (for 3 years beyond completion of the Work).

- .2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

**Section 18.2 Additional Insureds.** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Department and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Department.

**Section 18.3 Waiver of Subrogation.** All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

**Section 18.4 Strength of Insurer.** All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

**Section 19 Miscellaneous Provisions.**

**Section 19.1 Service Contract Act Provision.** The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as Exhibit

**Section 19.2 False Claims Act.** The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

**Section 19.3 Retention of Records: Inspections and Audits.**

**Section 19.3.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**Section 19.3.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

**Section 19.3.3** The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held,

owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**Section 19.3.4** The Contractor agrees to include the wording of this Section 16 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

**Section 19.3.5** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 19.3.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 19.3.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**Section 20            Gratuities and Officers Not to Benefit Provisions.**

**Section 20.1**        If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**Section 20.1.2**    In the event the Contract is terminated the Department shall be entitled:

- .1        to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- .2        as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by

the Contractor in providing any such gratuities to any such officer or employee.

**Section 20.2** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

**Section 20.3 Ethical Standards For Department's Employees And Former Employees.** The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 20.4 Anti-Deficiency Act.** The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**Section 20.5 Living Wage Act.** The Contractor agrees that the work performed under this Agreement shall be subject to the District of Columbia Living Wage Act.

**Section 21    Order of Precedence.** A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- a. This Contract document
- b. Contract Exhibits other than the Standard Contract Provisions
- c. Contractor's Proposal dated \_\_\_\_\_
- d. The RFP dated March 16, 2015, as amended
- e. Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 7, 2007.

**IN WITNESS WHEREOF,** each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

**DEPARTMENT OF GENERAL SERVICES**

**By:** \_\_\_\_\_  
**Name:** Jonathan Kayne  
**Title:** Interim Director/Chief Contracting Officer  
**Date:** \_\_\_\_\_

**[INSERT NAME]**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_